IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1395 OF 2005
IN
EXE.APPLN NO.375 OF 2003
IN
SUMM. SUIT NO. 826 OF 2001

Jetharam Govaji Chaudhary .. Plaintiff

vs

Techno Mech Inds .. Defendant
&
Atul Harbada .. Applicant

Mr.H.V.Chande for Plaintiff

Mr.G.S.Bhat for Applicant

CORAM : SMT R.S.DALVI, J

DATE : 16th January, 2007

P.C.

1. The plaintiff has obtained exparte decree in the above Summary suit on 27th March, 2002. The plaintiff has yet to execute the decree by attachment of the property being A/10,Bhagirith Condominium J.P.Nagar, Goregaon (E) Bombay-63.

2. The applicant claims that the said flat belongs to him and cannot be attached and has applied for raising the attachment. The applicant must therefore show his ownership rights in the said flat. The applicant has produced the original sale

deed on a stamp paper of Rs.20/- executed between the defendants and the applicant showing sale of the said flat of 600 sq.ft forRs.3,00,000/-. The document is unregistered and inadequaely stamped, The document is not even stamped as an agreement of sale at the relevant time. The applicant cannot show by such document the execution as reflected in the document. Hence, the applicant cannot show himself to be a bonafide purchaser for value without notice of the plaintiffs' claim in suit as on the date of the Agreement. An agreement of the kind relied upon by the applicant can be easily back-dated. Hence, the applicant cannot rely upon such a document in a court of law to obtain reliefs for protection of the property sought to be transferred under such an Agreement.

3. It is argued on behalf of the applicant that the applicant can get the defect rectified by payment of stamp duty and by registering the documents. The defendant has been absconding. An exparte decree has been passed. The defendant has not appeared in any of the proceedings of the suit or in execution. The defendant is not available for executing the Deed of Confirmation and also for late registration of the document. It is argued on behalf of the applicant that after giving a public

notice, the applicant alone can get the documents registered. No such procedure is shown to be prescribed by law.

4. The applicant has applied for raising of the attachment claiming his right, title and interest in the attached flat. The title has not passed to the applicant. The applicant has therefore no legal right in the premises. Interest of the applicant is at best as an unregistered holder of the property.

5. The applicant has produced a duplicate share certificate no.46 issued on 26th March, 1999. Reverse of the certificate shows transaction of the applicant which is dt.27th December, 1998 which is prior to the issuance of the certificate. The original certificate which would have passed to the applicant at the time of execution of the documents and at the time of transfer of the flat to his name is also not produced. The lack of registration, lack of payment of stamp duty as well as absence of the original share certificate shows that the documents obtained by the applicant may be got up at a later date.

6. Consequently, to test the applicant's claim on

merits, contemporaneous evidence at least must be produced by the applicant which would show the execution of the Agreement on the date stated therein.

7. The applicant has not produced his ration card in the said flat. It is his case that he actually resides in another flat of the same society where the building Bhagirath is situated.

8. The applicant has produced several bills of Bhagirath Condominium. Each of them are on usual computer stationery being computer prints outs. They can be procured by anyone at any time. Bills are for certain months of 2001 and thereafter for certain periods of 2003, 2004 and 2005. They are shown to be signed usually by the treasurer and sometimes by the Secretary of the condominium. No bills of the condominium for the years 1998,1999 or 2000 are produced. Contemporaneous documentary evidence which can be available to the applicant at the time of the transaction that he entered into with the defendants is, therefore, conspicuosly absent.

9. Same is the position with electricity bills. Electricity bills produced upon querry of the court

are also for the period from and after July 2004. Bills of earlier periods showing possession of the applicant in the property stated to be purchased by him as far back as 25th December, 1998 are conspicuosly absent.

10. Absolutely no case of any ownership of the property showing the applicant's title or his legal right or interest in the property is made out even prima facie. The application therefore cannot be granted for the reliefs sought.

11. The applicant's advocate stated that usually evidence is to be led in an application for raising attachment, The evidence would be required if there are disputed questions of fact to be considered in the application.

12. Based upon the applicant's own original documents,the applicant's right to have the attachment raised is not shown. The applicant need not be cross examined on his case. Consequently no oral evidence is required to be led. The applicant's documentary evidence having been considered. That excludes any oral evidence to the contrary.

13. Seeing the applicant's case upon the applicant's own documents the applicant's right to have the attachment raised is not made out.

14. Chamber summons is dismissed. Execution shall proceed.

(Smt R.S.Dalvi,J)